

Terms and Conditions

OpenUp

Welcome to OpenUp. These Terms and Conditions apply to the visit of the Website by Visitor and the provision of Services by OpenUp. The Terms and Conditions constitute an agreement between Visitor or Client and OpenUp. By visiting the Website and/or using the Service, Visitor and Client declare to be bound by the Terms and Conditions.

Please note: Services related to medical treatment are not subject to the offering of OpenUp. In particular, the services of OpenUp do not include medical or psychotherapeutic advice or treatment and do not replace such.

1. Definitions

1.1. In these Terms and Conditions, the terms below, written with a capital letter and used in the singular and/or the plural, are given the following meaning:

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| a. Account | The registered profile of Client which Client must create to use My OpenUp; |
| b. Agreement | The agreement to use the Services; |
| c. Client | The natural or legal person who enters into the Agreement with OpenUp to use the Service; |
| d. Content | All content originating from OpenUp and/or its suppliers, as available on the Website and/or in the Service, including but not limited to texts, programs, images, videos, layout, designs and logos; |
| e. Behavioural Coach | The Behavioural Coach employed and/or engaged by OpenUp for the help of Client during the Session |
| f. Intellectual Property Rights | Any intellectual property rights, including but not limited to rights such as copyrights, database rights, domain names, model rights, neighboring rights, patents, trade mark rights, trade name rights, as well as the rights to know-how and trade secrets; |
| g. My OpenUp | The online environment of OpenUp where Clients can, among other things, gain insight into their mental well-being, analyze results and get tips to improve their well-being; |
| h. OpenUp | The Dutch limited liability company OpenUp B.V., having its principal place of business at Nieuwe Herengracht 47, 1011RN, Amsterdam, the Netherlands, registered with the Dutch Chamber of Commerce under number 77340159; |
| i. Party | OpenUp and/or Client or Visitor; |
| j. Privacy Policy | The privacy policy of OpenUp with regard to the Website |

and the Service, as available at www.openup.com/privacy-policy;

- k. Services The services that OpenUp performs for Client in execution of the Agreement, including but not limited to access to the Website, access to My OpenUp, the offering and giving of Sessions, providing chat contact, group sessions e.g. mindfulness, masterclasses and/or webinars;
- l. Session Online (video) session with a Behavioural Coach;
- m. Terms and Conditions These terms and conditions of OpenUp, available for download and print at www.openup.com/terms-and-conditions.pdf;
- n. Visitor Anyone who visits the Website, regardless of whether they are a Client or not;
- o. Website The websites of OpenUp, including but not limited to www.openup.com, www.openup.nl, www.openup.de, openup.be and www.openup.fr

2. Applicability and scope

- 2.1. The Terms and Conditions apply to the Agreement, the Website, the Service and/or the use thereof by Visitor and/or Client, and all performance of (other) (legal) acts between the Parties..
- 2.2. OpenUp is entitled to change and/or supplement the Terms and Conditions at any time. The most recent version of the Terms and Conditions will be available on the Website and/or will be brought to Client's attention during the Service. If Client continues to use the Service after the Terms and Conditions have been changed and/or supplemented, Client thereby irrevocably accepts the changed and/or supplemented Terms and Conditions. If Client does not agree with the amended and/or supplemented Terms and Conditions, his only option is to no longer use the Service.
- 2.3. If the Terms and Conditions are or become partially invalid or void, Client and/or Visitor and OpenUp shall remain bound by the remaining part of these Terms and Conditions. OpenUp shall replace the invalid or void part by terms that are valid and not void and whose legal consequences, given the content and intent of the Terms and Conditions, correspond as closely as possible to those of the invalid and/or void part.
- 2.4. OpenUp expressly rejects the applicability of any terms of use, purchase conditions and/or other (general) conditions of Client and/or Visitor.
- 2.5. The Terms and Conditions have been prepared in English and contain Dutch legal terms (which are quoted in inverted commas: "..."). The Terms and Conditions may have been translated into other languages. In case of a dispute, the English version shall have precedence and must be interpreted in accordance with the laws of the Netherlands.
- 2.6. OpenUp does not offer or replace services related to medical or psychotherapeutic treatment. Our service can be used in addition to such therapies but is not a substitution. When suffering from disablement in one's mental health, such as a depression or anxiety disorder, we recommend discussing with your therapist if OpenUp can be of additional value.
- 2.7. Important note: If you have thoughts or even concrete plans to end your own life, the services of OpenUp are not suitable for you. If such thoughts occur during the use of our services, you must immediately consult a doctor or psychotherapist or immediately contact the telephone counseling service, please dial

- Netherlands: 113
- Germany: 0800 111 0 111
- Belgium: 1813 (Dutch), 0800 32 123 (French) or 32 (0) 2 648 40 14 (English)
- France: 01 45 39 40 00
- Spain: 914 590 050 / 914 590 055
- Austria: 142
- Switzerland: 143
- Italy: 02 2327 2328
- United Kingdom: 999 (when in danger) or 111 (urgent help)
- Croatia: (01) 4833-888 or 1 16 111

3. Performance of the Agreement

- 3.1. OpenUp provides to Client, under the terms of the Agreement and the Terms and Conditions, the Service as described in the Agreement and the Terms and Conditions.
- 3.2. OpenUp will use reasonable endeavours to perform the Agreement for the benefit of Client in accordance with the Agreement and the Terms & Conditions.
- 3.3. All Services provided by OpenUp are performed on the basis of its commercially best effort (in Dutch: "inspanningsverbintenis").
- 3.4. OpenUp is entitled to engage auxiliary persons (in Dutch: "hulppersonen"), including subordinates, for the performance of the Agreement.
- 3.5. Client warrants that he is entitled to enter into the Agreement and that he is at least 18 years old.
- 3.6. OpenUp is not responsible for any decision made by Clients and/or Visitors through the Service and/or the Website. OpenUp offers no guarantee of success of any kind.
- 3.7. Client and Visitor accept that the Website and the Service contain only the functionalities and other properties as they find them on the Website and/or in the Service at the moment of use ("as is"). OpenUp expressly excludes any warranties and/or indemnities of any kind, including but not limited to warranties and/or indemnities with respect to the quality, security, legality, integrity and accuracy of the Website and/or the Service, except as otherwise provided in the Terms and Conditions.
- 3.8. OpenUp is at all times entitled to change, adapt, put out of commission (temporarily or permanently), restrict the use of, and/or terminate the Website and/or the Service, without being or becoming in any way liable to Client and/or Visitor for damages. If Client and/or Visitor do not agree with the changes and/or amendments made, their only option is to stop using the Website and/or the Service and/or to rescind (in Dutch: "ontbinden") the Agreement.

4. Use of the Service

- 4.1. The use of the Website and/or the Service is at Client's and/or Visitor's risk, including but not limited to the use of the Account. Client and/or Visitor are themselves fully responsible and liable for all actions they take by means of the Website and/or the Service. Client and Visitor indemnify OpenUp against all claims of third parties related to and/or resulting from their actions with the (help of the) Website and/or the Service, a violation of the Agreement and/or the Terms and Conditions by Client and/or Visitor and/or any unlawful act by Client and/or Visitor.
- 4.2. Clients and Visitors are not permitted to reproduce, publish, resell, use for commercial purposes or otherwise make available to third parties, or perform any other unlawful acts with respect to, the Website, the Service and/or the Content.

5. Sessions

- 5.1. OpenUp offers Sessions to Client.
- 5.2. The times that OpenUp is available for Sessions are listed on the Website. When Client books a Consult he has to indicate which time is convenient for him.
- 5.3. Client warrants that the information provided by him, whether or not during Sessions, such as physical or psychological conditions, use of medication, work activities or certain leisure activities, are (and stay at all times) complete, current, truthful and accurate. OpenUp is not liable for damages of any nature whatsoever, caused by OpenUp based on incorrect and/or incomplete information provided by Client.
- 5.4. If the Behavioural Coach determines that a different treatment method is better for the Client and/or if there is any other justifiable reason, the Behavioural Coach and/or OpenUp may stop the Sessions. In that case the Behavioural Coach will explain to Client why this choice was made. Any prepaid Sessions will be refunded if the Sessions are stopped.
- 5.5. All information and/or advice that OpenUp and/or its Behavioural Coaches give to Client is always without any obligation. The use of such information and/or advice is at Client's own risk. OpenUp is not liable for damages of any nature whatsoever caused by the use of such information and/or advice.

6. My Open Up; Account

- 6.1. Client must create an Account in the manner described on the Website in order to create a profile in My OpenUp. The information provided by Client when creating the Account, as well as all other information provided must be (and stay) complete, current, truthful and accurate. Client warrants this.
- 6.2. OpenUp may set additional requirements for Clients, such as a minimum age. These requirements are stated on the Website.
- 6.3. Client shall not create an Account in the name of another person or in the name of a fictitious person.
- 6.4. OpenUp shall be entitled at any time, stating the reasons, to refuse the registration of an Account, to impose additional requirements for the registration of an Account or to block or delete an Account already registered with immediate effect.
- 6.5. Client cannot claim any compensation from OpenUp in connection with a refusal, blockage or deletion of an Account.
- 6.6. During the registration of the Account, Client must provide (among other things) an email address which can be used to access his Account. Client is responsible for keeping (the combination of) these data confidential.
- 6.7. Client is liable for the use of the Service through the Account. OpenUp assumes that Client is actually the one who logs in with the username and password and/or uses the by Client provided email address.
- 6.8. As soon as Client knows or reasonably should know that his Account has come into the hands of unauthorized persons, Client shall notify OpenUp immediately. Client shall also immediately take effective measures to limit unauthorized access.

7. Intellectual Property Rights

- 7.1. All Intellectual Property Rights related to the Website, the Service and/or the Content belong to OpenUp and/or its licensors. OpenUp and/or its licensors reserve all rights not expressly granted to Client and/or Visitor in the Terms and Conditions.
- 7.2. Client and Visitor acknowledge and agree that the Intellectual Property Rights to the Website, the Service and/or the Content are held by OpenUp and/or its licensors and that they are not granted any rights except those expressly granted to them in the Terms and Conditions.
- 7.3. Clients and Visitors are explicitly not permitted to download, copy, modify, disclose, use for direct or indirect commercial purposes or use any information made accessible through the Website and/or the Service,

including Content, unless OpenUp or the relevant rights holder has given its prior written permission or mandatory Dutch law permits such use.

- 7.4. Client and Visitor acknowledge that the Website and the Service contain protected databases within the meaning of Article 1(a) of the Dutch Database Act (in Dutch: "Databankenwet"), and that OpenUp is the producer of these databases as referred to in Article 1(b) and Article 1(a) of the Dutch Database Act.
- 7.5. As the producer of the databases, OpenUp has the exclusive right to authorize the use of data from these databases.
- 7.6. Client and Visitor may use data from the databases only to the extent that use is permitted under the Terms and Conditions and for the performance of the Service.
- 7.7. Client and Visitor are not permitted, without the express prior written consent of OpenUp, to extract and/or re-utilize a substantial part of the contents of the database(s) and/or to extract and/or re-utilize non-substantial parts of the contents of the database(s) repeatedly and systematically within the meaning of the Dutch Database Act.
- 7.8. The Client and Visitor are not permitted to make improper use of the Website and/or the Service. This means, among other things, that Clients and Visitors are not permitted to use any software and/or hardware tools and/or solutions (under their own management or made available by third parties) in so far as these are intended to take over any information made accessible via the databases or to spider, scrape, search or in any other way improperly use and/or view the databases.

8. Privacy

- 8.1. During the registration of the Account and when using the Service, Client provides data to OpenUp. If this data is personal data, it will be stored and processed in accordance with the Privacy Policy of OpenUp and the applicable laws and regulations.
- 8.2. OpenUp is allowed to transfer Client's personal data to third parties, if there is a valid basis for doing so under the General Data Protection Regulation (GDPR). OpenUp informs Client about this transfer to third parties through the Privacy Policy.

9. Availability

- 9.1. At OpenUp, we aim to help people within 24 hours. We offer accessible, personalized support from certified psychologists via chat, phone, or video for anything concerning mental well-being.
- 9.2. OpenUp does not warrant that the Website and/or the Service will be free of errors and bugs, complete and/or up-to-date at all times.
- 9.3. OpenUp performs maintenance work on the Website and/or the Service. This work may take place at any time, announced and unannounced, including when it may result in limited availability.
- 9.4. OpenUp does not warrant that the Website and/or the Service or any part thereof is accessible at all times and functions without interruptions, failures and/or errors. Interruptions, faults and/or errors in the Website and/or the Service may occur as a result of interruptions, faults and/or errors in the internet connections and/or as a result of viruses and/or errors and/or defects. OpenUp accepts no liability whatsoever for any damage, loss or costs incurred as a result of the (temporary) unavailability of the Website and/or the Service, including but not limited to (temporary or permanent) loss of data, to the extent permitted under mandatory law.

10. Liability

- 10.1. OpenUp is not liable for damages resulting from any unauthorized use of the Website and/or Service by other Clients and/or Visitors and/or other third parties, unless OpenUp is liable for it under mandatory law.
- 10.2. OpenUp accepts no liability for damages resulting from the provision of the Website and/or the Service, or from any tort or otherwise, to the extent permitted by mandatory law.

- 10.3. If, notwithstanding the foregoing, OpenUp is liable to Client or Visitor for damages for any reason whatsoever, OpenUp shall only be liable for direct damages (in Dutch: "directe schade") suffered by Client or Visitor as a result of an attributable failure (in Dutch: "toerekenbare tekortkoming") by OpenUp and/or a wrongful act up to the amount that in the relevant case under the professional liability insurance of OpenUp is paid out, plus the amount of the deductible that is not borne by the insurer under the terms and conditions of this professional liability insurance.
- 10.4. If, for any reason, no payout under the above-mentioned insurance may take place, the said amount shall be limited to compensation of the direct damages with a maximum of € 1,000.00 (one thousand euros) per damaging event (a series of consecutive events is considered as one event).
- 10.5. Direct damage means only:
- damages due to death or bodily injury;
 - material damage to property;
 - reasonable costs incurred to prevent or limit direct damage, which could be expected as a result of the event on which the liability is based; and
 - reasonable costs incurred in determining the cause of the damage.
- 10.6. The liability of OpenUp for indirect damages (in Dutch: "indirecte schade") is excluded. Indirect damages include all damages that are not expressly defined as direct damages in the previous paragraph, including but not limited to consequential damages (in Dutch: "gevolgschade"), losses, damage to electronic data and/or damage due to delays in the transport of data traffic and costs incurred to prevent or determine indirect damages.
- 10.7. The exclusions and limitations of liability contained in this article do not apply in cases of intent (in Dutch: "opzet") and/or deliberate recklessness (in Dutch: "bewuste roekeloosheid") on the part of OpenUp.
- 10.8. Unless performance by OpenUp is permanently impossible, the liability of OpenUp for an attributable failure in the performance of the Agreement shall arise only if Client immediately sends OpenUp a notice of default (in Dutch: "ingebrekestelling") in writing, whereby a reasonable term for remedying the failure is given, and OpenUp continues to fail attributable in the performance of its obligations even after that term.
- 10.9. There is no attributable failure in performance of the Agreement by OpenUp in the case of force majeure. Force majeure includes illness of employees and/or absence of employees that are crucial for the provision of the Service, interruptions in the supply of electricity, strikes, riots, fire, natural disasters, floods, failures of suppliers of OpenUp, failures of third parties engaged by OpenUp, failures of (other) Clients, failures in the connection with the internet, hardware failures, failures in (telecommunications) networks, epidemics, pandemics, government measures and all other external causes on which OpenUp has no influence.
- 10.10. If the force majeure continues for at least thirty (30) days, both OpenUp and Client are entitled to rescind the Agreement in writing, without being obliged to pay compensation for any damages in respect of such rescission.
- 10.11. Any claim for damages by Client or Visitor that has not been specified and explicitly reported by Client or Visitor shall lapse by the mere lapse of twelve (12) months after the claim arose. This shall not affect the Client's and Visitor's obligation to complain (in Dutch: "klachtplicht").

11. Force majeure

- 11.1. A Party will not be bound to fulfil any contractual and/or legal obligation if it is prevented from doing so as a result of force majeure ("overmacht").
- 11.2. Force majeure exists if a Party is hindered in the performance of its obligation(s) as a result of a circumstance that is not due to its fault, and also not by virtue of law, a legal act or socially accepted standards.
- 11.3. With force majeure on the side of OpenUp is meant, apart from what is understood in the law and jurisprudence, illness of employees and/or Behavioural Coaches and/or absence of employees and/or

Behavioural Coaches who are crucial for the supply of the Service, interruptions in the supply of electricity, strikes, riots, fire, natural disasters floods, shortcomings of suppliers of OpenUp, shortcomings of third parties called in by OpenUp, failures in the connection with the internet, hardware failures, failures in (telecommunication) networks, epidemics, pandemics, government measures and all other external causes on which OpenUp has no influence.

- 11.4. The Party that has invoked force majeure is obliged to make efforts to ensure that the force majeure situation is of the shortest possible duration.
- 11.5. If a situation of force majeure lasts longer than thirty (30) days, or as soon as it is clear that the situation of force majeure will last longer than three (3) months, both Parties will be entitled to dissolve the Agreement in writing in part (insofar as it affects the situation of force majeure). Any work already carried out under the Agreement will in that case be settled proportionately, without the Parties owing each other anything else. This shall not affect the other provisions of the Terms and Conditions.

12. Confidentiality

- 12.1. OpenUp is obliged to confidentiality on the basis of code of professional standards.
- 12.2. Client shall treat information confidentially when OpenUp has appointed this information as confidential or when Client knows or reasonably should suspect that the information was intended to be confidential.
- 12.3. The confidentiality obligations continue to apply after the termination of the Agreement.

13. Third parties

- 13.1. OpenUp may transfer rights and obligations under the Agreement to third parties. Client hereby irrevocably agrees to such transfer. Client is not entitled to transfer the rights and/or obligations under the Agreement to a third party without the prior written consent of OpenUp.
- 13.2. OpenUp is permitted to engage third parties in the performance of the Agreement and/or the Service or parts thereof.

14. Termination of the Agreement

- 14.1. The Agreement is entered into for the term of the service agreement that OpenUp has concluded with the employer of Client, in the absence of which the Agreement is entered into for an indefinite period of time. If the service agreement between OpenUp and the employer of Client terminates, this Agreement terminates automatically.
- 14.2. Without prejudice to the other rights of OpenUp, OpenUp shall be entitled at any time and at its sole discretion, without becoming liable to Client, to terminate Client's use of the Service and/or the Agreement with immediate effect for serious reasons, including but not limited to the situation when Client misuses the Services. Misuse includes, but is not limited to, exhibiting aggressive behavior towards a Behavioural Coach and/or repeatedly not showing up for appointments.
- 14.3. A Party has the right to rescind the Agreement if the other Party attributably fails to comply with its obligations under the Agreement and that Party, after having received a written notice of default whereby a reasonable term for remedying the failure is given, and the failing Party continues to fail attributably in the performance of its obligations even after that term.
- 14.4. OpenUp, due to termination of the Agreement, in any way and for any reason, is never obliged to pay damages or any refund of fees already received to Client.
- 14.5. All provisions of the Terms and Conditions that are intended to survive termination of the Agreement, including but not limited to the provisions relating to Intellectual Property Rights, warranties and indemnities, shall continue in full force and effect after termination of the Agreement.

15. Applicable law and competent court

- 15.1. To the extent not otherwise required by mandatory law, the Website, the Service, the Agreement, the Terms and Conditions and any disputes arising therefrom are governed by the laws of the Netherlands. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980) shall not apply.
- 15.2. To the extent not otherwise required by mandatory law, all disputes relating to the Website, the Service, the Agreement and the Terms and Conditions will be submitted to the competent court of the District Court of Amsterdam.

16. Complaints

- 16.1. In cases of a complaint, Client can discuss this in the first instance with the OpenUp team and/or the concerning Behavioural Coach. OpenUp can be contacted through the contact details on the Websites.
- 16.2. If discussing the complaint with OpenUp and/or the Behavioural Coach is not possible for Client and/or Client does not feel comfortable doing so, he/she can contact the operational directors of OpenUp, Client can contact the operational director via complaints@openup.com.
